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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Mark Brnovich, et al.,

10 Plaintiffs,

11 v.

12 Joseph R Biden, et al.,

13 Defendants.
14

No. CV-21-01568-PHX-MTL

ORDER

15 Pending before the Court is Plaintiff John Doe’s Motion for Leave to Proceed
16 Pseudonymously. (Doc. 16.) For the following reasons, Plaintiff’s Motion is denied.

17 **I. BACKGROUND**

18 Plaintiff is a Federal employee working in the State of Arizona. (Doc. 14 at ¶ 27.)
19 He “strongly opposes the COVID-19 vaccine,” has not received the vaccine, and does not
20 intend to comply with the Federal employee vaccine mandate. (*Id.*) Though Plaintiff has
21 requested a medical exemption from the vaccine mandate, Plaintiff “expects that his
22 medical exemption request will be denied.” (*Id.*) Because Plaintiff alleges “disclosure of
23 his identity risks enormous negative consequences to his future ability to work for the
24 federal government,” he filed this Motion for Leave to Proceed Pseudonymously. (Doc.
25 16 at 3.)

26 **II. LEGAL STANDARD**

27 Federal Rule of Civil Procedure 10 requires “the title of the complaint must name
28 all the parties.” Fed. R. Civ. P. 10(a). This rule reflects the “paramount importance of open

1 courts” such that the “default presumption is that plaintiffs will use their true names.” *Doe*
 2 *v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1046 (9th Cir. 2010).
 3 “As a general rule, the identity of the parties in any action, civil or criminal, should not be
 4 concealed except in an unusual case, where there is a need for the cloak of anonymity.”
 5 *United States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008) (internal quotations and
 6 citations omitted).

7 But in “special circumstances when the party’s need for anonymity outweighs
 8 prejudice to the opposing party and the public’s interest in knowing the party’s identity,” a
 9 party may proceed anonymously. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d
 10 1058, 1068 (9th Cir. 2000). The Ninth Circuit has identified three situations in which
 11 parties have been allowed to proceed anonymously: (1) when identification creates a risk
 12 of retaliatory physical or mental harm; (2) when anonymity is necessary to preserve privacy
 13 in a matter of a sensitive and highly personal nature; and (3) when the anonymous party is
 14 compelled to admit his or her intention to engage in illegal conduct, thereby risking
 15 criminal prosecution. *Id.* “Anonymity, however, cuts against the bedrock principle that
 16 courts and judicial records are open.” *Jane Roes 1–2 v. SFBSC Mgmt., LLC*, 77 F. Supp.
 17 3d 990, 993 (N.D. Cal. 2015); *see also Kamakana v. City & Cty. of Honolulu*, 447 F.3d
 18 1172, 1178 (9th Cir. 2006). District Courts have broad discretion to determine whether a
 19 plaintiff may proceed anonymously. *Advanced Textile Corp.*, 214 F.3d at 1068;
 20 *Kamehameha Schools*, 596 F.3d at 1045–1046.

21 **III. ANALYSIS**

22 Plaintiff Doe seeks to proceed under a pseudonym based on concerns of retaliation.¹
 23 (Doc. 16 at 5.) Defendants argue that Plaintiff fails to establish that an unusual or
 24 exceptional circumstance as is required to proceed pseudonymously. (Doc. 53 at 3.)

25 Where a pseudonym is designed to prevent retaliation, this Court must evaluate: (1)
 26 the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears,

27
 28 ¹ Because Plaintiff states he would be willing to reveal his identity to Defendants’
 attorneys, the Court construes Plaintiff’s Motion as applying to the public’s right of access
 to his identity. (Doc. 16.)

1 and (3) the anonymous party’s vulnerability to such retaliation. *Advanced Textile Corp.*,
 2 214 F.3d at 1068. This Court must also “determine the precise prejudice at each stage of
 3 the proceedings to the opposing party, and whether proceedings may be structured so as to
 4 mitigate that prejudice.” *Id.* Finally, the Court “must decide whether the public’s interest
 5 in the case would be best served by requiring that the litigants reveal their identities.” *Id.*

6 The threatened injury at stake here is that Plaintiff is subject to retaliatory workplace
 7 discipline and termination. (Doc. 16 at 4.) But this allegation does not establish (nor does
 8 Plaintiff allege) any “greater threat[s] of retaliation” than any other federal employee who
 9 does not wish to be vaccinated, or any other plaintiff challenging the vaccine mandate. *Id.*
 10 at 1070–71 (quoting *Southern Methodist Univ. Ass’n of Women Law Students v. Wynne &*
 11 *Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979)). Additionally, Plaintiff’s supervisor is most likely
 12 already aware that Plaintiff does not wish to get the vaccine, as Plaintiff admits he has
 13 already requested a medical exemption. (Doc. 16 at 2; Doc. 14 at ¶ 27.) Moreover, the
 14 threatened injury is not dependent on John Doe’s status as a Plaintiff in this case—even if
 15 the Court were to grant Plaintiff’s motion, he still faces the threat of workplace discipline
 16 and termination, simply as the result of his noncompliance with the vaccine mandate.
 17 Plaintiff cites no cases supporting his contention that termination from his job rises to the
 18 level of “extraordinary,” and Plaintiff does not allege physical or psychological injury. *Cf.*
 19 *Advanced Textile Corp.*, 214 F.3d at 1070–71 (finding “greater threat[s] of retaliation than
 20 the typical . . . Plaintiff” because plaintiffs in that case faced “deportation, arrest, and
 21 imprisonment”); *see also Doe v. Amazon.com, Inc.*, No. C11-1709MJP, 2011 WL
 22 13073281, at *3 (W.D. Wash. Dec. 23, 2011) (finding “industry blacklisting and loss of
 23 livelihood” to be “an order of magnitude less” than the potential harm faced by plaintiffs
 24 in *Advanced Textile Corp.*). While the Court can hypothesize additional threats or adverse
 25 outcomes as the result of revealing his identity, Plaintiff did not argue anything beyond
 26 termination in his Motion. (Doc. 16 at 4.) Therefore, based on Plaintiff’s arguments, this
 27 factor weighs in favor of non-pseudonymity.

28 Plaintiff contends his fear of retaliation is reasonable based on Defendants’

1 comments relating to the vaccine mandate. (Doc. 16 at 4.) The only comment that Plaintiff
 2 cites specifically is President Biden’s statement that “his patience is wearing thin.” (*Id.*)
 3 In assessing the reasonableness of Plaintiff’s fear, “[w]hat is relevant is that plaintiff[was]
 4 threatened, and that a reasonable person would believe that the threat might actually be
 5 carried out.” *Id.* at 1071. Though a veiled threat of violence, depending on the context, is
 6 grounds for reasonable fear, “a court may disregard a comment, which is a threat on its
 7 face, because the context demonstrates frustration, a joke, or political commentary instead
 8 of a true intent to harm.” *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d
 9 1036, 1044 (9th Cir. 2010).

10 The singular statement that Plaintiff cites does not raise to the level of “a threat of
 11 violence.” *Id.* The statement does not contain a threat—direct or veiled. Even assuming
 12 the statement was a threat, it can reasonably be construed as “frustration” or “political
 13 commentary” as opposed to “a true intent to harm” Plaintiff. *Id.* (affirming the district
 14 court’s conclusion that fear of online threats of physical retaliation with racial animus
 15 against children was unreasonable). Plaintiff cites no other threats from Defendants or
 16 third parties. As above, this factor weighs in favor of non-pseudonymity.

17 As to Plaintiff’s vulnerability, Plaintiff does not allege any facts showing that he is
 18 particularly vulnerable; instead, Plaintiff concludes that “[h]is absolute vulnerability to
 19 retaliation weighs in favor of granting pseudonymity.” (Doc. 16 at 4.) Because Plaintiff
 20 has failed to allege any facts showing that he is vulnerable to retaliation, this factor also
 21 weighs in favor of non-pseudonymity.

22 As to prejudice, Plaintiff argues any potential prejudice is negated by Plaintiff’s
 23 willingness to disclose his identity to Defendants, but not the public at large. Defendants
 24 counter that Plaintiff’s identity is crucial to the jurisdictional arguments Defendants have
 25 raised. (Doc. 53 at 5.) Defendants present no argument as to how they are potentially
 26 prejudiced (given Plaintiff’s willingness to disclose his identity to Defendants’ counsel)
 27 besides logistical issues. (*Id.*) As Defendants recognize, these logistical issues could be
 28 mediated through a protective order, sealed filings, and closed hearings. (*See id.*) As such,

1 this factor weighs in favor of pseudonymity.

2 Finally, as to the public interest, Plaintiff argues that the public has “minimal”
 3 interest in identifying him due to the number of plaintiffs filing similar claims. (Doc. 16
 4 at 4; Doc. 67 at 2.) Plaintiff asserts that his personal information “has little public relevance
 5 and no bearing on the validity of his claims.” (Doc. 16 at 4–5.) Though the Court agrees
 6 that this is an “extremely controversial and very important issue[],” Plaintiff fails to show
 7 how the existence of other similarly-situated plaintiffs (or potential plaintiffs) overcomes
 8 the strong presumption of “common law rights of access to the courts and judicial records.”
 9 *Kamehameha Schools*, 596 F.3d at 1042–43.² Plaintiffs likewise fail to demonstrate how
 10 the public interest is served by permitting him to proceed pseudonymously. *See Advanced*
 11 *Textile Corp.*, 214 F.3d at 1068. At best, this factor is neutral.

12 Balancing the factors, Plaintiff has not demonstrated a reasonable threat of severe
 13 harm great enough to overcome the presumption in favor of access to judicial records.

14 **III. CONCLUSION**

15 Accordingly,

16 **IT IS ORDERED denying** Plaintiff’s Motion for Leave to Proceed
 17 Pseudonymously. (Doc. 16.)

18 **IT IS FURTHER ORDERED** that Plaintiffs shall file an amended complaint
 19 adding John Doe’s true name by **Monday, December 20, 2021 at 12:00 PM**. If Plaintiffs
 20 do not refile an amended complaint by that time, the Clerk of the Court is directed to

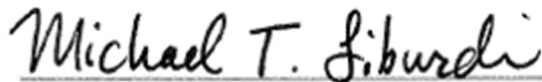
22 ² Plaintiff argues in his reply brief that revealing his name “at least raises the possibility
 23 that the Defendants could try to deliberately moot out his case.” (Doc. 67 at 2.) Given
 24 Plaintiff’s willingness to reveal his identity to Defendants’ counsel, (Doc. 16 at 2 (“Plaintiff
 25 does not oppose disclosure of relevant identifying information to counsel for
 26 Defendants[.]”), 4 (“Plaintiff agrees to disclose identifying information to counsel for
 27 Defendants as necessary[.]”)), this argument is unpersuasive. Plaintiff’s allegation here of
 28 “the possibility” that he might get a medical exemption as the result of his identity in this
 case is “too wishy-washy and speculative” and “not sufficiently absolute to sway this factor
 in [Plaintiff’s] favor.” *Doe v. Lake Oswego Sch. Dist.*, No. 3:15-CV-00385-ST, 2015 WL
 5023093, at *4 (D. Or. Aug. 20, 2015) (quoting, in part, *Jessica K. v. Eureka City Schs.*
Dist., No. C 13–05854 WHA, 2014 WL 689029, at *2 (N.D. Cal. Feb. 21, 2014)).

1 dismiss John Doe without prejudice without further order of the Court.

2 **IT IS FURTHER ORDERED** that Defendants may file a supplemental brief, not
3 to exceed seven pages, addressing any changes to their position that may arise upon being
4 notified of John Doe's true name. This brief is due no later than **Thursday, December 23,**
5 **2021 at 11:59 PM.**

6 **IT IS FINALLY ORDERED** that Plaintiffs may submit a seven-page reply to
7 Defendant's supplemental response brief no later than **Wednesday, December 29, 2021**
8 **at 11:59 PM.**

9 Dated this 15th day of December, 2021.

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12 Michael T. Liburdi
13 Michael T. Liburdi
14 United States District Judge
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